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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 PATRICK S. CLEWIS and PATRICIA E.
7 CLEWIS,

8 Plaintiffs,

9 v.

10 BANK OF AMERICA N.A., and BAC
11 HOME LOANS SERVICING, LP,

12 Defendants.

CASE NO. C11-5077BHS

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' MOTION TO
DISMISS

13 This matter comes before the Court on Defendants Bank of America N.A.
14 ("BANA") and BAC Home Loans Servicing, LP's ("BAC") (collectively "Defendants")
15 motion to dismiss (Dkt. 8). The Court has reviewed the briefs filed in support of and in
16 opposition to the motion and the remainder of the file and hereby denies the motion as to
17 BAC and grants the motion as to BANA for the reasons stated herein.

18 **I. PROCEDURAL HISTORY**

19 On January 27, 2011, Plaintiffs Patrick and Patricia Clewis ("the Clewises") filed a
20 complaint against Defendants alleging various violations of federal and state laws
21 originating from a mortgage transaction. Dkt. 1.

22 On June 23, 2011, Defendants filed a motion to dismiss the Clewises' complaint
23 because of improper service and failure to timely serve. Dkt. 8. On July 13, 2011, the
24 Clewises filed a certificate of service. Dkt. 10. On July 14, 2011, the Clewises filed an
25 objection to Defendants' motion. Dkt. 12. On July 15, 2011, Defendants replied. Dkt.
26 15.

II. DISCUSSION

In Washington, parties may not perfect service upon corporations by certified mail. Fed. R. Civ. P. 4(e), 4(h); R.C.W. 4.28.080(9). In this case, the Clewises initially attempted to serve Defendants via certified mail. The Court finds that this was ineffective service of process.

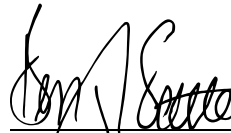
Plaintiffs must also accomplish proper service within 120 days of the filing of the complaint. Fed. R. Civ. P. 4(m). If Plaintiffs fail to timely serve Defendants, the court must dismiss the action without prejudice against that Defendant or order that service be made within a specified time. *Id.*

In this case, Defendants argue that the Court should dismiss the Clewises' complaint because the Clewises' service on BAC was untimely and the Clewises have still never served BANA. The Court agrees that the Clewises' service on BAC was untimely, but the error does not warrant dismissal of the complaint. The Court also agrees that the Clewises have failed to show that BANA has been properly served. The Court finds that, at this point, dismissal of the Clewises' claims against BANA is not warranted. The Court, however, orders the Clewises to properly serve BANA within two weeks or their claims against BANA may be dismissed.

III. ORDER

Therefore, it is hereby **ORDERED** that Defendants' motion to dismiss (Dkt. 8) is **DENIED** as to BAC and is **GRANTED** as to BANA. The Clewises shall file proof of service upon BANA by August 25, 2011 or their claims against BANA may be dismissed.

DATED this 9th day of August, 2011.


BENJAMIN H. SETTLE
United States District Judge